

# **Customs protection of intellectual property rights as a means for life quality improvement**

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*Restlessness is discontent and  
discontent  
is the first necessity of progress.*

*T. A.  
Edison*

*Influence of intellectual activities to development of economy, every person's wellbeing and personal life quality improvement is significant if the intellectual property is properly protected. This article mostly deals with understanding of the role of intellectual property, its protection by specific customs means; the article also provides tendency analysis. It is largely symbolic that the last EU regulations which establish PIP in customs at the same time mark the 21<sup>st</sup> century development in attitudes to the meaning of intellectual activity while improving a societal life quality.*

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## **Introduction**

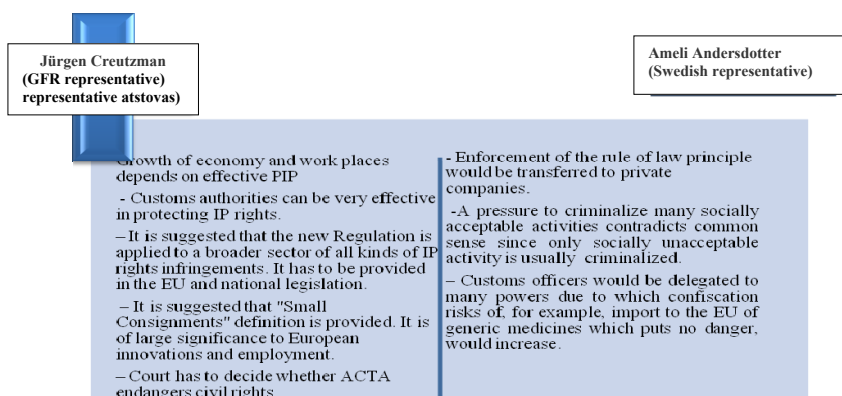
Forgery, counterfeiting and piracy – very quickly growing sort of “business“, when such business people make illegal use of a well known trademark, design owner or other intellectual object with exclusive copyright. It has been established that piracy and counterfeiting for European companies annually cost approximately 250 billion Euros. It is not rare cases when forged production endangers users' health and safety. One of the ways to combat against this is not allowing entering of such production the EU and other countries' markets. Counterfeiting and piracy not only make material loss to exclusive copyright owners but it also cause non- material damage by making illegal use of an object of intellectual property and its reputation, and in particular it causes much damage to intellectual production users. Among most counterfeit products there are pharmaceuticals, toys, perfume, alcoholic beverages, tobacco products and even daily food products. Using such production put into direct risk users health. By now it is decided that fight against counterfeit and piracy has to cover monitoring of internal and external markets, controlling of counterfeit or forged production by expanding customs functions and developing its specific methods. It is also influenced by a defining feature of modern times

which is very quickly expanding intellectual activity and growing production diversity.

One of the examples showing different opinions of international community are never ending discussions on Anti- Counterfeiting Trade Agreement – ACTA, an international agreement which aims at fighting against counterfeit products in trade and in internet activity, protecting intellectual property and countries’ economics from forged production which reduces economic stability, worsens quality of life. The agreement is for purpose of establishing uniform and strict sphere regulation in all countries which are parties to the ACTA. Much attention in the agreement is dedicated to the protection of trademarks and innovative products counterfeit.

Opponents to the ACTA express their discontent and claim that the agreement may change execution not only of civil but also of criminal legislation, i.e. criminalization of certain activities for which until now criminal sanctions were not applied. The opponents also disagree with the idea that capacity of customs was increased for making obstacles for the flow of forged products to enter the European Union. The critics argue that intellectual authors’ property rights are put above the fundamental human rights as business and the state are granted “exceptional” rights. Without going in –depth into the issue it is worth noting that intense discussions on PIP are going even in the European Parliament.

(see Fig. 1).



**Source:** media respondents reasoning related to a plenary session of the European Parliament in Strasbourg where ACTA legitimating was discussed.

**Figure 1.** Opposite MEPs’ opinions on IP rights

Worth mentioning that 478 MEPs voted against ACTA, 39 were pro, and 165 abstained from voting. Large opinion differences on the issue are observed in the Lithuanian society as well. According to the data from February 14 -17, 2012, provided by a market and public opinion research company "*Spinter research*", two thirds of the respondents who participated in the research were of the opinion that ACTA should not be ratified by the Parliament (Lithuania and other authorized EU representatives signed the agreement in Japan in January 26, 2012).<sup>1</sup>

Indeed, ACTA analysis shows that the agreement offers several novelties, however, they are not radical, they neither provide for direct control of the processes in the Internet, nor foresees increased criminal prosecution. Much attention in the agreement is dedicated to the protection of trademarks and forgery of products. The opposition to the agreement claims that those novelties in the agreement would allow customs authorities check the content of personal electronic devices (mobile phones, computers, mp3 players, etc.) Without any doubt, such checks are being performed now as well, therefore, ACTA does not introduce any new additional exceptional rights. When crossing a state frontier electronic devices are not checked without any reason, nobody reads any personal short messages or other personal information contained in a mobile phone or a computer. A different situation is when 30 pm3 players are taken "on board" to "maintain a joyful atmosphere" or 10 mobile phones and 15 portable computers are there in order to ensure the absolute and continuous connection. In such case a customs officer might have some suspicions that the devices are being transported for commercial purposes. That is why the obligation of customs authorities is to apply the procedure established in the legislation<sup>2</sup>. Customs may detain those goods which are not included in the Customs register or do not have an owner, that is "ex officio", in case there are serious suspicions about appropriate risk profile regarding the illegal use of intellectual property".<sup>3</sup>

In terms of the topic being analyzed in the article, ACTA agreement is of interest to that point that according to survey of Lithuanian population, two thirds of the respondents are of the opinion that such violations of PIP as forgery of trademarks, industrial design, violation of geographical or original references are considered as socially acceptable behavior and is not condemned as a harsh violation of law. Moreover, theories which claim that

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<sup>1</sup> <http://www.balsas.lt/naujiena/582857/du-treccaliai-lietuvos-internautu-nepritaria-acta-ratifikavimui>

<sup>2</sup> Ruibys G. ACTA- „prekybos sutartis dėl kovos su klastojimu“ – pritarti ar atmesti? (trade agreement on fight against counterfeit- agree or reject?) <http://www.kibererdve.lt/naujienos/aktualiju-blogas/acta-prekybos-sutartis-del-kovos-su-klastojimu-pritarti-ar-atmesti>

<sup>3</sup> Ozoling V. Customs bodies actions against Counterfeit products movement // Customs Scientific Journal CUSTOMS. ROCB & RTCs European Region. № 2, 2013.

“intellectual property is necessary evil” which monopolizes market have started emerging. Discussions are being recently suggested on “how to define margins of law” in terms of protecting IP owners interests.<sup>4</sup>

Intelligence is a natural human characteristic, which according T. A. Edison does not allow to settle down and makes one search for internal satisfaction which leads to progress, hardly finds its way to recognition especially in the post communist society and that people are different in their creative abilities and personal impact to the societal progress. The problem consists of the fact that here PIP system has been intensively created only during the last decades and having no specific traditions of regulation of such relations a huge part of the population supports and at the same time unconsciously takes part in relations which violate the law. Social economic environment also makes a big impact. As it is noted in the Communication from the Commission COM (2012) 225 final “The economic crisis means that consumers and businesses focus predominantly on price, with the risk that safety considerations lose importance and the space for counterfeiting products increases.”<sup>5</sup> Those and other factors encourage that intellectual property is protected by legal remedies. Therefore, a mechanism of legal regulation of PIP is being reasonably improved and its implementation in international trade and international businesses includes very significant customs role. The article aims at revealing tendencies of customs functions in PIP by applying comparative, systematic analysis as well as explaining and applying legislation sources and other methods.

### **Aspects of methodology of research of living level and related issues**

Authors in the scientific literature agree that there is no commonly approved life quality concept or life quality definition. According to a modern concept of harmonious development life quality is defined as social result of interrelation of social, economic and environmental factors. Societal wellbeing is commonly defined as a basic sector of activities which depends of time and space, influence of objective and subjective factors in achieving better common results of society members. In the context of this philosophical notion an objective of societal wellbeing, ensuring conditions of its creation is the main goal of the state as an institution. Based on this, the economic guidelines for the strategy “Europe 2020” have been prepared.

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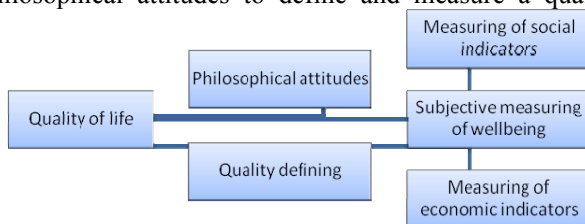
<sup>4</sup> Lavišius L. Intelektinė nuosavybė kaip kliūtis konkurencijai. [www.lrinka.lt/uploads/files/dir35/dir1/2\\_0.php](http://www.lrinka.lt/uploads/files/dir35/dir1/2_0.php) and other.

<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; COM (2012) 225, Brussels, 22.05.2012.

They establish development priorities and ways to reach them.<sup>6</sup> It is worth mentioning that sectors clearly regulated by law (for example, societal living environment, protection of rights and legitimate interests, maintaining socially responsible business, societal participating in meeting society members' needs, etc.) have to be directed to wellbeing creation in the EU and every member state.

Scientists analyzing problems of a quality of life raise another notion: more and more attention is being paid to improving of common wellbeing instead of single economic or social indicators. Governmental representatives, public organizations and private business subjects speak for creating a common societal wellbeing, and harmonious development of different sectors is stressed in order to ensure an increase of a wellbeing level.<sup>7</sup>

With regard to complexity of the problem, new theories are being created, independent wellbeing and life quality theory schools are emerging, as well as representative concepts to be followed appear. The main application of philosophical notions in practice is performed by creating certain criteria, systems, models. Scientific literature mostly analyzes several philosophical attitudes to define and measure a quality of life.<sup>8</sup>



Source: Diener, E.; Suh, E. 1997 *Measuring quality of life: economic, social, and subjective indicators*, *Social Indicators Research* 40 (1)

The main philosophical quality measuring approaches include different, however, interrelated sectors of wellbeing understanding.<sup>9</sup> One way or another they are related to a human intellectual activity dimension:

a) measuring of social indicators: safety and security ensuring, defining and measuring delinquency level and other indicators. Violations

<sup>6</sup> Communication from the Commission "2020 Europe. A strategy for smart, sustainable, inclusive growth" (COM(2010)2020).

<sup>7</sup> Samoška M. Visuomenės gerovės ir verslo sąlygų palankumo vertinimo tyrimų analizė. *Business in XXI century*, 2013 5(1): 1–6. <http://www.mla.vgtu.lt>.

<sup>8</sup> Brock, D. 1993. Quality of life in healthcare and medical ethics, in M. Nussbaum and A. Sen (Eds.). *The Quality of Life*. Oxford: Clarendon Press, 95–132. <http://dx.doi.org/10.1093/0198287976.003.0009>

<sup>9</sup> Diener, E.; Suh, E. 1997. Measuring quality of life: economic, social, and subjective indicators, *Social Indicators Research* 40(1): 189–216. <http://dx.doi.org/10.1023/A:1006859511756>

of intellectual property rights put threat to societal and personal safety and security.

b) subjective measuring of wellbeing: data on population opinion survey is analyzed on their personal wellbeing life quality experience. Understanding of intellectual property rights and decisions are defined by objective and subjective circumstances, therefore, we often face huge differences in opinion.

c) Economic indicators measuring: quantitative indicators and official statistical data are measured. Analysis of official statistical data reveals huge damage done to economics and a quality of life.

When researching life reality by such parameters, methodological presumptions to analyze common being, social, economic life quality problems are ensured. A meaning of such methodology is defined by the fact that improvement of a life quality is perceived as a complex process defined by economic, social, legal, state administrating, psychological, educational and other presumptions. Therefore, when analyzing reality processes, their tendencies and obstacles, real factors for life quality improvement, the topic has to be examined from different angles. Such methodology allows understanding and predicting development tendencies, by scientific methods revealing creation of well being by means of state institutions, public policy.

As it has already been mentioned, big differences among countries, their social groups are conditioned by objective circumstances, for example, social and economic factors, a quality of society; however, subjective aspects are no less significant.<sup>10</sup> A survey on subjective wellbeing points to traditional economical concerns such as material wellbeing, income importance to human life quality which strongly influences a society's mentality characteristics. The largest impact on personal discontent for life quality has a deprivation; for example, inability to afford basic products and services, make use of trendy brands, lifestyle goods, etc.

Among indicators of life satisfaction levels, quality of public services is of importance as it has a large impact on perceiving wellbeing for those experiencing deprivation. The article and other representative surveys confirm the hypothesis that public services and institutional trust is the second most important indicator of quality of society. This is one of the circumstances which encourage developments of customs activities. The analysis of the research data reveals another aspect which is important in terms of the topic which is being analyzed: in order to improve a subjective

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<sup>10</sup> Second European Quality of Life Survey "Subjective well-being in Europe"  
<http://www.eurofound.europa.eu/publications/htmlfiles/ef09108.htm>.

wellbeing and a quality of life it is much more important to improve material wellbeing (which would allow using the most update quality technologies, modernized daily life, etc.) instead of increasing an average life level. However, the latter goal still remains of importance in Lithuania and other new EU member states.

It has to be mentioned that improving quality of PIP and other public services means not only a quantity or sort of the services. It is as important that those services are oriented to a perspective of social and economic development, i.e. improvement of a quality of life. Openness, transparency and responsibility of public institutions increases trust of business and intellectual products users, which is the second most important indicator of a quality of society. Therefore, in the EU and on the national level there are aspirations to create responsible environmental policy of basic life sectors, to prepare sustainable wellbeing strategies, oriented towards satisfying a country's and social groups' (public communities, business and public organizations) needs, creating material wellbeing and at the same time anchoring moral relations which encourage trust and cooperation.

So, PIP in the international trade and public customs services provided for the international business in seeking to ensure reliability of trademarks and other industrial property objects is important sphere of life quality and wellbeing creation. The EU customs role in meeting needs of final industrial property products' users is significant and is growing due to globalization challenges, therefore, a legal regulation system is being created and constantly improved, modern tools to implement international agreements, the EU and national customs legal norms are provided.

### **PIP experience and tendencies during the recent decade**

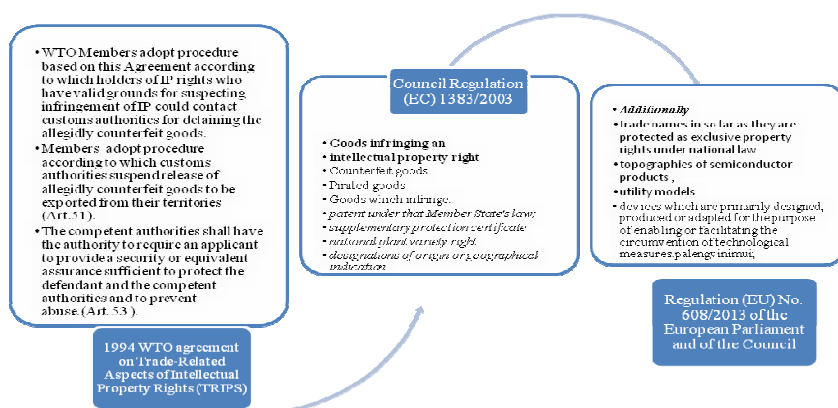
European Union "Guidelines for import controls in the area of product safety and compliance" give orientation how to improve a quality of society life, on the EU and national level to define interests which are to be met by legal remedies and technical rules which are vested to be implemented by the EU customs. The main criterion is provided in Art.1.2 of the Regulation (EC) No 765/2008, "this Regulation provides a framework for the market surveillance of products to ensure that those products fulfill requirements providing a high level of protection of public interests, such as health and safety in general, health and safety at the workplace, the protection of consumers, protection of the environment and security".<sup>11</sup> This requirement

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<sup>11</sup> Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 OL L 218, 13/08/2008 (Text with EEA relevance)

has to be met by all products which enter the EU market, no matter whether they are produced by the EU or the third country.

It has to be noted that the EU customs law is based on an international multiparty agreement – General agreement on Tariffs and Trade; (GATT), and as of 1995 – on WTO regulated provisions on trade and duties policy. In the context of the topic analyzed, it is necessary to pay attention to a regulation of a function of WTO in terms of PIP; it is a separate agreement on protection of intellectual property rights in trade (Agreement on Trade related Aspects of Intellectual Property Rights; TRIPS). Minimum standards of legal protection of intellectual property are foreseen to the parties to this agreement. In other words, TRIPS connects an international trade system with international agreements which ensure PIP.<sup>12</sup>



**Figure 3.** PIP dimension outline

During the last 50 years the EU has prepared a solid base of political actions and rules which ensure safety of EU users, their real opportunities to make use of social and economic European progress, the created and constantly developing internal market. EU products and services using policy include policy on protection of intellectual property, respective legislation which safeguards users and general society from unsafe falsified products; a quality European export to the third countries is also encouraged. The EU legislation which protects intellectual property rights is a fight against unfair commercial activity expressed by illegal trade of counterfeit goods, smuggling and other activities which violate legal relations.

<sup>12</sup> Laurinavičius A. Intelektinės nuosavybės apsauga tarptautinėje prekyboje. Vilnius: MRU, 2009, P. 91.



In their efforts to ensure better process management and users' safety the European Parliament and Commission try to attain the two following goals:

1. Improving regulation of product and service safety and strengthen market monitoring system;
2. Strengthen food chain safety.

With regard to Guidelines for import controls in the area of product safety and compliance<sup>13</sup> customs and market surveillance authorities on a regular basis develop cooperation in order to establish reliable in terms of time and practice criteria based on which import control results would be evaluated.<sup>14</sup>

As it is noted in the Commission Communication COM (2012) 287 final<sup>15</sup> products and services based on IPR can be difficult and expensive to create but cheap to replicate and reproduce. Therefore, owners of trademarks, industrial design, or other intellectual products are faced with market distortions. Organised and large-scale infringement of IPR has become a global phenomenon and is causing worldwide concern. In 2009 the ten most popular trademarks' value in the EU on average reached almost 9 % (IP/11630, Brussels, May 24, 2011). Unfortunately, for example, according to a OECD (*Organization for Economic and Social cooperation and Development*) research, international trade in counterfeit goods grew from just over USD 100 billion in 2000 to USD 250 billion in 2007.<sup>16</sup> The research report points to the fact that this sum is larger than GDP of 150 countries. According to the data published by the European Commission on activities of national customs the number of registered cases of goods which allegedly violate intellectual property rights rose from 26,704 in 2005 to 43,572 in 2009, which is more than a 60 % increase in five years.<sup>17</sup> In Lithuania there have been seized 14,000 of counterfeit goods. Such products in Lithuania are seized almost on a daily routine – in 2012 there were 390 cases of seizure of alleged counterfeit production.

Infringers of IPR deprive EU creators of appropriate rewards, create barriers to innovation, harm competitiveness, destroy jobs, decrease public finances and possibly threaten the health and safety of EU citizens. A study carried out by the Centre for Economics and Business Research (CEBR)

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<sup>13</sup>[http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/info\\_docs/customs/product\\_safety/guidelines\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/info_docs/customs/product_safety/guidelines_en.pdf)

<sup>14</sup> COM (2012) 225 final

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; COM(2011) 287 final Brussels, 24.5.2011

<sup>16</sup> OECD; Magnitude of counterfeiting and piracy of tangible products: an update November 2009;

[http://www.oecd.org/document/23/0,3343,en\\_2649\\_34173\\_44088983\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/23/0,3343,en_2649_34173_44088983_1_1_1_1,00.html).

<sup>17</sup> [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm).

stresses that losses caused by counterfeiting and piracy could reduce EU GDP by EUR 8 billion annually.<sup>18</sup> Counterfeiting also generates large profits for organized crime groups and distorts the internal market by encouraging illicit practices within businesses<sup>19</sup>. To combat IP infringements The *European Observatory on Counterfeiting and Piracy* was established in 2009.<sup>20</sup> The main goals of the Observatory is gathering and reporting the data on impact of counterfeit and piracy to economics and society; it also serves as a platform to join forces, to exchange experiences and information and to share best practices on enforcement.

In December 2010, Report from the Commission on Enforcement of intellectual property rights protection<sup>21</sup> there is a need expressed to strengthen present legal enforcement ensuring system and to encourage additional voluntary agreements among interested parties.

A brief summary reveals that PIP doctrine is being consistently developed. With regard to recent situation, the European Parliament and the Council in June 12, 2013, adopted Regulation (EU) No. 608/2013<sup>22</sup> of the European Parliament and of the Council concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003, which regulated customs activities in this sector in the last decade<sup>23</sup> and establishes new legislative customs relations (see Figure 3). Expanded customs surveillance sphere allows performing stricter control at the external EU borders, seizing goods allegedly infringing intellectual property rights; some procedures have been changed, process management innovations have been introduced<sup>24</sup> in order to adequately protect legitimate interests of traders and international business. As we all know, functions of the EU customs are performed by the national customs; therefore, new requirements for harmonization of actions and concrete common action guidelines emerge. PIP in customs is a significant sector of scientific

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<sup>18</sup> CEBR (2000 m.) "The impact of counterfeiting on four key sectors in the European Union (EU) and on the EU economies", Centre for Economics and Business Research, London.

<sup>19</sup> See, for ex. Europol, "OCTA. Organized Crime Threat Assessment 2011"

[http://www.europol.europa.eu/publications/European\\_Organised\\_Crime\\_Threat\\_Assessment\\_\(OCTA\)/OCTA\\_2011.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA_2011.pdf).

<sup>20</sup> 11.9.2009 Communication from the Commission "Enhancing the enforcement of intellectual property rights in the internal market", COM (2009) 467.

<sup>21</sup> COM (2010) 779, [http://ec.europa.eu/internal\\_market/iprenforcement/directives\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm).

<sup>22</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003

<sup>23</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Text with EEA relevance)

<sup>24</sup> Innovation of the process: application of new or essentially updated production methods, including those of products delivery. These methods can cover modification of equipment (programming equipments including) and/ or organization of production or combination of such modifications while applying new knowledge.

Lithuanian Innovation Development Programme for the year 2014–2020, approved on December 18, 2013, by a Resolution No. 1281 of Government of the Republic of Lithuania

research and practical analysis; in brief, it is a significant segment of the system in terms of market surveillance and protection from counterfeit products. The main presumption of the Regulation (EC) No. 608/2013 is the experience and a review of enforcement of the Regulation (EC) No. 1383/2003 which showed that “in the light of economic, commercial and legal developments, certain improvements to the legal framework are necessary to strengthen the enforcement of intellectual property rights by customs authorities, as well as to ensure appropriate legal certainty”<sup>25</sup>. Scientists, experts, practitioners and politicians prepare comprehensive recommendations on the respective Regulation and other legal acts applied in all 28 EU Member States.<sup>26</sup>

*Due to limited capacity of the article we will not present a comprehensive comparative analysis of the respective customs regulations, however, we will provide with more significant customs legal relations developments review based on such comparative analysis. With regard to current challenges there are following regulation developments:*

a) The Regulation expands PIP spectrum (Section 1, Art. 2). Intellectual property rights to be protected now include trademarks, design, author’s and ancillary rights, patents, geographical indications, plant variety rights, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products and utility models.

b) Under the Regulation the Simplified Procedure has become obligatory: procedures of destruction of detained products which had been applied only by several Member States including Lithuania, without initiating judicial procedures to establish whether the rights of intellectual property were infringed.

c) The Regulation also introduces specific procedure for small consignments of counterfeit and pirated goods (Section 2, Art. 26). Small consignment means a postal or express courier consignment, which contains three units or less or has a gross weight of less than two kilograms. Such measures are introduced in order to reduce the administrative burden and costs. It has to be pointed out that in the context of expanding internet trade cases of IP rights infringements also increase.

Under the Small Consignments Procedure differently from previous situation now customs authorities are obliged to ask the declarant or the holder of the goods whether he/ she agrees with destruction of the goods and

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<sup>25</sup> Regulation (EC) No. 608/2013

<sup>26</sup> A report of January 8, 2014, of Budget and European Union Structural Assistance Unit of Economic Progress Department of the Office of the Government of the Republic of Lithuania No. NV-61 concerning the Law Project of the approval of Chapter IV, Art. 80 and amendments of the attachment to the Law on Customs, supplementing the Law with Art. 401 and declaring articles 81,82,83,84,85,86 and 104 invalid.

if he/she agrees or it is presumed that he/ she agrees, customs authorities destroy the goods without informing owner of the IP. The owner of the intellectual property is informed only if such an agreement is not received or it cannot be presumed as received. This provision guarantees a possibility for the owner of the intellectual property to initiate judicial proceedings for the infringement of his/her intellectual property rights. Moreover, the procedure can also be applied in case the IP owner asked in his application to store the IP; the customs authorities have a guarantee and can require that the IP owner covers the procedural costs.

Worth noting is that the Regulation subject belongs to the common trade policy sector. The Regulation No. 608/2013 marginally deals with the right as the majority of the provisions of the Regulation are legally charged, therefore, in order to correctly understand them and apply in practice it is necessary to refer to other EU and national legislation as well as case law. While examining law sources we approach the doctrine provision which defines the customs role in PIP – customs is a specific link in the international logistics chain acting as a mediator. All responsibility in the international trade for IP protection falls upon intellectual property rights subjects as customs activities are impossible without their consent. Having detained the goods or suspended their release customs authorities give the opportunity for IP subjects to inspect the goods whose release has been suspended or which have been detained. The customs authorities may take samples that are representative of the goods; however, any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision (Art. 19). Thus, costs, responsibility for protecting IP rights falls upon the holder of those rights. Customs authorities are a mediator or assistant, if such assistance has been asked for. If the holder of IP rights does not take any actions even if the customs authorities have detained allegedly counterfeit goods, there is no possibility to keep them further detained or even more, destroy.

## **Conclusion**

To conclude, worth noting that despite development of the international business philosophy and the essence of legal regulation, customs functions remained the same, but there appeared only new tasks for implementing these functions connected with the new circumstances<sup>27</sup>. It becomes in particular clear when PIP by means of customs is analyzed.

At first glance it might seem that nowadays regulation of customs activities is more related to the principles of private law. Therefore we should bear in mind the unique public role of Customs, as it works both as a

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<sup>27</sup> Chevers A. Definitions of customs functions in the context of economic integration and Globalization // *Customs Scientific Journal CUSTOMS. ROCB & RTCs European Region*. № 2, 2013.

service and as a human rights institution; moreover, it functions in a constantly changing environmental circumstances. We may presume that customs functions will be undergoing transformation in the future as well.

In order to understand the significance of customs function in protecting IP rights it is necessary the philosophical notions of life quality to relate with a policy and culture of customs activities. Orientation towards philosophical notions of international trade encourages integration and accelerates mastering of good practice. A model of systemic analysis allows reveal essence of this specific phenomenon, foresee perspectives of processes development and strategic goals.

## **УТОЧНЕНИЕ АДМИНИСТРАТИВНО-ПРОЦЕССУАЛЬНОЙ КОМПЕТЕНЦИИ КАК МЕРА ПОВЫШЕНИЯ ЭФФЕКТИВНОСТИ ПРАВООХРАНИТЕЛЬНОЙ ДЕЯТЕЛЬНОСТИ НА ГОСУДАРСТВЕННОЙ ГРАНИЦЕ РЕСПУБЛИКИ БЕЛАРУСЬ**

Асаенок Б.В.

*Статья посвящена обоснованию необходимости наделения таможенных органов полномочиями на ведение административного процесса и подготовку дел об административных правонарушениях, а также по привлечению к административной ответственности лиц, создающих угрозу общественному порядку и общественной безопасности.*

Принцип «две службы на границе» в определенной степени упростил порядок перемещения граждан, транспортных средств и товаров в пунктах пропуска через Государственную границу Республики Беларусь. Все виды контроля в отношении физических лиц, транспортных средств и товаров в пунктах пропуска осуществляются таможенными органами и органами пограничной службы. Применительно к компетенции указанных органов по поводу осуществляемого контроля законодательством определен и перечень административных правонарушений, с которыми таможенные органы и органы пограничной службы уполномочены бороться в ходе своей деятельности. Административно-процессуальная компетенция таможенных органов по поводу начала административного процесса и ведения подготовки дела об административном правонарушении к рассмотрению определяется п. 21 ч. 1 и п. 8 ч. 2 ст. 3.30 Процессуально-исполнительного кодекса Республики Беларусь (далее - ПИ-КоАП). Она включает в себя ведение административного процесса не только по административным таможенным правонарушениям, но и по административным правонарушениям в сфере финансов, рынка ценных